IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3379 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GORDHANBHAI VELABHAI KOLI PATEL

Versus

STATE OF GUJARAT & OTHERS

Appearance:
MR PR NANAVATI for Petitioners
MR H.H. PATEL for Respondent No. 1 & 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 26/06/2000

ORAL JUDGEMENT

#. Rule. Mr.H.H.Patel, learned A.P.P. waives service of rule for opponent no.1. There is no need to serve rule on opponent no.2 as his interest will be taken care of by Ld.A.P.P.

#. By this application the applicants, whose bail granted earlier came to be cancelled by the Sessions Court Ahmedabad (Rural) at Ahmedabad pray for quashing of the said order and releasing them on bail etc.

#. Against the present applicants FIR relating to the offences punishable under Sections 326, 504 506 (2) read with 114 I.P.Code came to be lodged with Viramgam Rural Police Station. In that connection they were arrested. They, therefore filed Criminal Misc. Application No.693/99 in the Court of Sessions Ahmedabad (Rural) at Ahmedabad which was assigned to the then Learned Additional Sessions Judge who hearing the parties allowed the same and enlarged the petitioners on bail on 2.8.1999 imposing certain conditions. Under one of the conditions imposed, the petitioners were directed not to enter into the local limit of Asalgam till 31.12.1999, making it clear that the petitioners would be free to enter into the village Asalgam if during the course of investigation the police summoned them for the purpose of investigation and were required to leave the village immediately after the purpose was over. It is alleged that on 3.9.1999 without any cause the applicants entered into the village Asalgam and committed the breach of the condition. Hence Misc. Criminal Application No.105/2000 came to be filed in the Sessions Court Ahmedabad (Rural) at Ahmedabad by Bhikhabhai Dharamsibhai Koli Patel the opponent no.2 for cancellation of bail on the ground that the applicants had committed the breach of the above stated condition imposed. The learned Additional Sessions Judge passed the order on 17.6.2000 cancelling the bail granted, and directing the applicants to appear before the Learned Judicial Magistrate (First Class) on 27.6.2000 and surrendering to the Judicial Custody. It is against that order this application is filed urging this court to release them on bail. The applicants have assured that in future no such breach would be committed. It is also submitted that under the bonafide impression that police was summoning them they entered into village Asalgam. What happened was that at the place of Sarpanch the parties were to assemble for working out terms of settlement and so Bhagabhai Gangarambhai Koli Patel asked Lalitbhai to inform the applicants to come to the village for the purpose of settlement. Lalitbhai informed the

applicant that the police was calling them. Hence they entered into the village etc.

#. Hearing the parties it is clear that the petitioners entered into the village because Lalitbhai gave a wrong signal sending the message that the police was calling them. Reposing full trust in Lalitbhai's message they entered into the village but found that they were called not by the police but by the leading persons of the village who had assembled for amicable settlement qua their dispute. The police also did not controvert the affidavit of Bhagabhai Gangaram filed in this regard in the Sessions Court. It therefore follows that the applicants entered into the village under the bonafide belief, and not with a view to commit the breach of the condition imposed and do some wrong misusing liberty granted. In view of such facts the order cancelling the bail can in no case be justified. As the applicants have not abused the liberty or they have done no act injurious to the interest of the prosecution, they are required to be enlarged on bail on the same terms and conditions they were enlarged by the then Learned Additional Sessions Judge, Ahmedabad (Rural) at Ahmedabad on 2.8.1999.

#. In the result the application is allowed. The applicants are ordered to be released on bail on the same terms and conditions they were released on bail by the Learned Additional Sessions Judge Ahmedabad (Rural) at Ahmedabad on 2.8.1999, making it clear that by now the time limit regarding the condition, the breach of which was in view of above facts was committed, is over, it would be open to the learned Additional Sessions Judge to review the situation and decide whether the said condition with necessary modification should be imposed or the same be dropped, and whether few other conditions should be imposed. Rule is accordingly made absolute.

(H. R. SHELAT, J.)

kks